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KUMARAGURUPARAN PANJALINGGAM v. JAMALUDHIN ABDUL RAHMAN

HIGH COURT MALAYA, SHAH ALAM
ROZANA ALI YUSOFF JC
[CIVIL SUIT NO: 22NCVC-996-08-2012]
29 FEBRUARY 2016

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LAND LAW: *Transfer – Validity of – Allegation of fraud and illegality – Whether transferee tendered evidence of fraud and/or unlawful transfer on a void and unenforceable instrument – Whether documents signed with consent and full knowledge of transferee – Whether fraudulent or illegal transfer proven*

C

LAND LAW: *Tenancy – Vacant possession – Termination of tenancy agreement – Refusal by tenant to deliver vacant possession on allegation that tenancy agreement invalid and void – Whether tenancy agreement valid and binding on parties – Whether tenant agreed to termination of tenancy agreement – Whether landlord entitled to double rental for holding over – Civil Law Act 1956, s. 28(4)*

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The plaintiff had given the defendant's brother, DW2, a loan for which the defendant stood guarantor and was secured by the defendant's house ('the property'). Pursuant thereto, the plaintiff and the defendant executed, *inter alia*, a friendly loan agreement, sale and purchase agreement ('SPA') and a power of attorney. Among the terms of the SPA was that the plaintiff agreed to purchase the defendant's property for RM230,000 subject to the charge in favour of CIMB Bank Bhd in the event of default on the friendly loan by the defendant, which was in fact given to DW2. However, the defendant subsequently found out that the property had been transferred to the plaintiff upon the failure of DW2 to settle the loan. The plaintiff thus lodged a police report. Subsequently, the plaintiff and the defendant entered into a tenancy agreement in respect of the property and the defendant agreed to pay a rental of RM800 per month. When the defendant defaulted in the payment of rental, the plaintiff issued a letter of termination of tenancy to the defendant and the defendant in return agreed to vacate the property and signed a letter to that effect ('P2'). However, the defendant and his family continued to stay on the property and discontinued to pay rent to the plaintiff on the ground that the transfer of the property to the plaintiff and the tenancy agreement was illegal and void. Hence, the action by the plaintiff, *inter alia*, for vacant possession of the property and double rental until the return of the property. The defendant counterclaimed that the transfer of the property to the plaintiff was illegal and void and that it be transferred back to the defendant.

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Held (allowing plaintiff's claim; dismissing defendant's counterclaim):

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(1) The defendant had pleaded fraud in the transfer of title of the property but failed to particularise the statement of fraud. There was no evidence against the plaintiff for the alleged fraud and/or unlawful transfer on a void and unenforceable instrument. The documents were signed with consent and full knowledge of the defendant. The defendant's defence

that he signed the documents without being given an opportunity to read the documents before signing and that he had no knowledge as to what document he was signing was unacceptable. Hence, there was no fraudulent or illegal transfer of the property from the defendant to the plaintiff. (paras 16, 19 & 24)

(2) There was no filing of civil suit against the plaintiff to recover or nullify or challenge the property. The issue of invalid transfer only arose in the defendant's counterclaim after the plaintiff filed a suit for the failure of the defendant to pay the rent. Although there were four police reports made by the defendant, it was done a few years after the transfer of the property. There was no evidence to show that the defendant had taken steps to safeguard his interest in the property such as by filing a caveat. (para 21)

(3) Tenancy agreement had been executed by the parties wherein the plaintiff had agreed to rent out the property and the defendant had agreed to pay rental. By signing the tenancy agreement there was an acknowledgement by the defendant that the plaintiff was the legal owner of the property. Further, his willingness to pay the rent as a tenant without dispute or objections showed that the defendant admitted to the validity of the tenancy agreement. There was no evidence to support the defendant's contention that he signed the tenancy agreement due to the plaintiff's insistence or coercion and out of fear that his family would be harmed. Therefore, the tenancy agreement was valid and bound both parties. (paras 22 & 23)

(4) P2 clearly showed that the plaintiff demanded the outstanding rental. The defendant having acknowledged P2 by signing and agreeing with the termination of the tenancy agreement, to stay on the property without paying any rental and refused to deliver vacant possession on the ground that the transfer was invalid. The failure of the defendant to deliver vacant possession fell within s. 28(4) of the Civil Law Act 1956 which entitled the plaintiff to claim double rental for holding over. In the circumstances, the plaintiff's claim for double rental was allowed. (paras 26 & 27)

Case(s) referred to:

CPR v. District Registrar of Dauphin Land Titles Office (1956) 4 DLR 518 ***(refd)***
Guan Teik Sdn Bhd v. Hj Mohd Noor Hj Yakob & Ors [2000] 4 CLJ 324 CA ***(refd)***
Imbi World Sdn Bhd v. Deluxe Tours Sdn Bhd & Another Appeal [1997] 3 CLJ 504 CA ***(refd)***
Jelai Holdings Sdn Bhd v. Perbadanan Setiausaha Kerajaan Pahang [2014] 1 LNS 854 CA ***(refd)***
Mari Boutique Sdn Bhd v. Jaya Jusco Stores Bhd [2003] 4 CLJ 848 HC ***(refd)***
Samuel Naik Siang Ting v. Public Bank Bhd [2015] 8 CLJ 944 FC ***(refd)***
Serangoon Garden Estate Ltd v. Marian Chye [1958] 1 LNS 77 HC ***(refd)***
South East Asia Brickworks Sdn Bhd v. Maria Antonette [1974] 1 LNS 158 HC ***(refd)***
Yogananthy AS Thambaiya v. Idris Osman [1997] 5 CLJ 705 HC ***(refd)***

A **Legislation referred to:**
Civil Law Act 1956, s. 28(4)(a)
National Land Code, ss. 340, 417
Rules of Court 2012, O. 18 r. 12

Other source(s) referred to:
B *Mallal's Supreme Court Practice*, 4th edn, pp 204-205

For the plaintiff - Dinesh Nair; M/s Dinesh Praveen Nair
For the defendant - AS Dhaliwal (Devinder Kaur with him); M/s AS Dhaliwal

Reported by S Barathi

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JUDGMENT

Rozana Ali Yusoff JC:

Introduction

D **[1]** The plaintiff's claims are as follows:

(a) A return of vacant possession of a single storey terrace house at No. 35, Jalan 16, Kampung Melayu, 68100 Batu Caves, Selangor (hereafter known as the property);

E (b) Double rental of RM1,600 per month from 1 June 2011 until the return of vacant possession of the property;

(c) Interest at the rate of 4% on multiple monthly rental compensation of the sum RM1,600 per month calculated from the date of judgment until full settlement; and

F (d) Interest and costs.

[2] The defendant's counterclaims:

(a) A declaration that the transfer of the property from the defendant to the plaintiff is illegal;

G (b) An order of the court that the said property be transferred to the defendant free from any burden within 30 days from the date of the said court order with the plaintiff signing all the necessary documents required for the transfer of the said property and to apply for consent to transfer from the State Authorities;

H (c) Without prejudice to the committal proceedings against the plaintiff if the plaintiff fails to comply with the said order of the court made under para. (b) above, therefore the Land Administrator of the District of Gombak, Selangor Darul Ehsan hereby ordered under s. 417 of the National Land Code to transfer the said property from the plaintiff to the defendant immediately;

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(d) An order for the plaintiff to refund RM10,000 (consultation fee) to the defendant and for the plaintiff to refund RM11,500 to the defendant being the amount paid as rental; and

(e) Cost and interest.

Background Facts

[3] The defendant was formerly the legal and beneficial owner of the property. Some time in November 2005, the defendant's brother, Hassan bin Abd Rahman (DW2) was having financial difficulties in his business and seeks assistance from the plaintiff for some loan. However DW2 has no property to be given as security for the loan as requested by the plaintiff. DW2 then offered to the plaintiff to buy his company's shares in Silver Gift Sdn Bhd but the plaintiff declined to accept the proposal. DW2 then asked the defendant to help him to be the guarantor and to give the defendant's property as security for the loan. As the said request came from his brother who had previously helped him a lot, the defendant was willing to assist DW2 and gave all relevant documents to DW2 which were needed for securing the said loan.

[4] DW2 then forwarded copies of all the relevant documents as requested by the plaintiff including the title of the property, identity card of the defendant and details of the bank housing loan of the defendant. The matter was handled by the plaintiff's solicitor, Messrs Jasbeer, Nur & Lee who then prepared few documents to be signed. These documents are friendly loan agreement; sale and purchase agreement; and power of attorney which were contemporaneously dated 30 November 2005 and signed by the defendant at the plaintiff's solicitor's office. The S&P agreement was executed whereby the plaintiff agreed to purchase the property from the defendant for RM230,000 subject to the charge in favour of CIMB Bank Berhad in the event of a default on the friendly loan by the defendant. On 28 November 2006 the defendant executed a supplementary agreement (P9) with the plaintiff for an extension of time to complete the purchase of the property. At the same time as the signing of the S&P agreement the defendant also executed an undated Form 14A memorandum of transfer (P12), an undated application for consent to transfer the property from the State Authority pursuant to reg. 44C of Selangor Land Rules.

[5] After the defendant signed the said documents, he did not receive any payment of monies from the plaintiff as he was only the guarantor instead the money was given to DW2. The defendant also did not put himself in know of what happened next after the said loan was given to DW2 since he trusted DW2 will pay the loan sum to the plaintiff.

[6] The defendant some time in 2008 after conducting a private search on his property discovered that the title of the property had been transferred under the plaintiff's name. The defendant contacted DW2 and was told that after the year 2007, DW2 failed to pay the loan and that the property was

then transferred to the plaintiff. The defendant asked DW2 to settle the said loan but DW2 failed to do so because of his financial difficulty. Further, the defendant has found out later that the plaintiff had redeemed the property by settling all the defendant's debts with the CIMB Bank Berhad for an outstanding sum of RM126,383.87. The defendant later lodged a police report on 2 December 2009 with regard to the said transfer.

[7] On 1 March 2010 the plaintiff and the defendant entered into a tenancy agreement (P5) in respect of the property and the defendant agreed to pay for a sum of RM800 per month as rental. The defendant later defaulted in rent for the month of April 2011 and May 2011. On 17 May 2011 the plaintiff issued a letter to the defendant to terminate the tenancy agreement and the defendant in return agreed to vacate the property by or before 31 May 2011. On 20 May 2011 the defendant signed a letter (P2) agreeing with the terms therein. However the defendant did not vacate and return the vacant possession of the property to the plaintiff despite there was a letter of demand being issued on 12 July 2011 to that effect. The defendant and his family continued to stay at the property on the basis that the property was inherited by him from his father. The defendant also discontinued paying rent to the plaintiff beginning May 2011 because he was advised that the transfer of the property to the plaintiff and the tenancy agreement was illegal and void. However, the defendant admitted to the signing of the tenancy agreement with the plaintiff and the termination letter of the tenancy but argued that it was signed under duress and coercion and out of fear that the plaintiff or his agents will harm the defendant or his family members.

[8] The plaintiff now claims that he is the lawful and beneficial owner and that the defendant is now a trespasser and in illegal occupation of the property. The defendant in turn claims that the transfer of property to the plaintiff is illegal and void and that the property is to be transferred back to the defendant.

Witnesses

PW-1	Kumaraguruparan A/L Panjalinggam	The Plaintiff
PW-2	Eugene Daniel Louis	The Plaintiff's Solicitor
DW-1	Jamaludhin bin Abd. Rahman	The Defendant
DW-2	Hassan bin Abd Rahman	The Defendant's Brother

Plaintiff's Submission

[9] The plaintiff's claims were premised on five following basis:

(a) The plaintiff is the rightful owner of the property.

(i) The plaintiff refers to the S&P agreement and the supplementary agreement marked as P8 and P9 respectively, the power of attorney marked as P10, the qualified title marked as P7, the consent to transfer ownership marked as P11, Form 14A of the National Land

Code marked as P12, the letter from CIMB Bank (Redemption) marked as P13, and Form 16N of the National Land Code marked as P14. The plaintiff submitted that he has an indefeasible title to the property under s. 340 of the National Land Code;

(ii) The defendant himself has confirmed that he has signed the S&P agreement and Form 14A of the National Land Code and he is aware of the purpose of the form and the relevancy of the documents;

(iii) The plaintiff submitted that the defendant's defence and counterclaim are an afterthought as the defendant has been paying rent without fail since March 2010 until March 2011. There was never any complaints lodged against the plaintiff by the defendant or DW2 nor was there any action brought by anyone challenging the transfer of the property to the plaintiff. The plaintiff contended that consideration has been given for the plaintiff in the transfer of the property and the defendant by signing the tenancy agreement has accepted the plaintiff's indefeasibility of title;

(iv) Therefore, the plaintiff submitted that although the defendant had throughout the cross-examination tried to deny that he had indeed signed these crucial documents by stating that he was only given the signing pages by the plaintiff's lawyer, it is trite law that 'he who alleges must prove'. Here neither the plaintiff's lawyer nor his firm was called to court by the defendant to be examined on the truth of the defendant's allegation. Thus, the defendant's allegation remain as an allegation.

(b) The police reports lodged by the defendant and his brother Hassan (DW2) is baseless.

(i) The plaintiff was never been charged in court for any of the alleged wrongdoings despite of numerous reports lodged to the police and SPRM by the defendant and DW2 on matters regarding corruptions and illegal money lending activities by the plaintiff.

(c) The defendant's failure to bring a civil claim against the plaintiff.

(i) The defendant also has failed to bring a civil claim against the plaintiff for the return of the property on the premise that the defendant was cheated by the plaintiff.

(d) The defendant's admission that the plaintiff had redeemed the property and that the defendant was occupying the property rent free.

(i) The plaintiff submitted that the defendant had admitted that he has not been paying rent of the property and had knowledge that the plaintiff had redeemed the property from the bank.

(e) There is no proof that DW2 has received or paid the loan given to him by the plaintiff.

A (i) The plaintiff also submitted that the defendant has admitted that he has no proof nor has he seen any proof of payment that DW2 has paid RM75,000 to the plaintiff for the payment of friendly loan given by the plaintiff to DW2. In addition DW2 also has no proof that he has received the loan from the plaintiff or had paid
B RM75,000 to the plaintiff as payment for the friendly loan;

(ii) The plaintiff submitted that there was no dispute that the tenancy agreement was executed between the plaintiff and defendant. It was also not disputed that the defendant had defaulted in rental payments and agreed to terminate the tenancy agreement and to return vacant
C possession to the plaintiff; and

(iii) It is clear that the defendant is neither the owner nor the tenant of the property and has no legitimate basis in continuing to occupy the property. Since the defendant has refused to vacate the property, the plaintiff is entitled for double rental under s. 28(4) of the Civil Law
D Act 1956.

[10] As to the counterclaims, the plaintiff submitted that the defendant's claims were baseless since it was not proven and the evidences were uncorroborated. The defendant's witness's oral testimony cannot be
E considered because of the severe lack of corroborating documentary evidence to vitiate the plaintiff's documents of ownership of the property on the ground of fraud, intimidation, illegality, want of capacity, want of consideration etc or the existence of a separate oral agreement between parties and the usage or custom relating to the subject matter.

F **[11]** The plaintiff submitted that he is the rightful and legitimate owner of the property and that the plaintiff's title is indefeasible. The defendant has failed to substantiate his allegations in his defence and counterclaims and the plaintiff's claims are to be allowed with costs.

Defendant's Submission

G **[12]** The defendant submitted that the plaintiff is not the rightful owner of the property and that the property belongs to the defendant on the followings basis.

(a) The plaintiff is not the rightful owner of the property.

H (i) The defendant submitted that he is the legal owner of the said property and the transfer of the property from the defendant to the plaintiff is invalid as it was done without the defendant's consent;

(ii) The defendant submits that the loan was a separate transaction altogether. The friendly loan agreement, the S&P agreement and the
I power of attorney that were signed contemporaneously on the same day ie, 30 November 2005. The transfer Form 14A of the NLC was purportedly executed on 6 May 2008 and the supplementary agreement was signed on 28 November 2006 almost a year later.

The S&P agreement as well as the supplementary agreement had expired when the transfer Form 14A was signed. Thus, the transfer of the property is invalid in accordance of the law; and

(iii) The defendant also submitted that the friendly loan agreement does not stipulate anywhere that the property is given as security and that if there is default, the plaintiff can affect the transfer of the property to himself. The whole transaction is not genuine has been executed to overcome the Moneylenders Act and therefore the agreements are void and unenforceable. The defendant relies on s. 340 of the National Land Code that applies to the registration of title or interest of the said property which has been transferred on a void and unenforceable instrument and thus should be set aside.

(b) The tenancy agreement was invalid and was terminated by the plaintiff.

(i) The defendant submitted that the tenancy agreement was terminated by the plaintiff as the plaintiff had testified that he had asked PW2 to speak to the defendant and suggested that the tenancy be terminated. PW2 also in his evidence stated that the defendant came to his office and signed the agreement to terminate the tenancy agreement (P5) on 20 May 2011;

(ii) The defendant admitted that he had agreed to terminate P5 but it was done due to the following reasons:

(a) There was insistence/coercion by the plaintiff and the defendant also feared that his family would be harmed by the representatives of the plaintiff who had interfered and threatened the defendant at his work place; and

(b) The agreement to terminate the P5 was due to the fact that the defendant could not pay the rental and that the transfer of the property to the plaintiff was invalid.

(iii) The defendant stated that in 2005, DW2 has asked him to be his guarantor and to charge his house which is the property in question to the plaintiff *in lieu* of a loan amounting to RM100,000 given by the plaintiff to DW2. The defendant signed the loan agreement as a guarantor to the loan and charged his house to the plaintiff. The defendant was never given a copy of the loan agreement.

(c) There is no need for the defendant to give vacant possession of the property to the plaintiff.

(i) The defendant submitted that the whole transaction was a friendly loan transaction and not a S&P agreement to transfer the defendant's property to the plaintiff. The defendant admitted that he has agreed as to the termination of P5 but not as to the vacant possession of the property as evidenced in the letter dated 17 May 2011 (P2).

(d) The plaintiff is not entitled to claim double rental.

(i) The defendant submitted that the plaintiff had failed to notify the defendant to claim double rental of the property. The defendant submits that the recovery of double rental is not as of right but it is discretion of the court;

(ii) The defendant refers to the case of *Mari Boutique Sdn Bhd v. Jaya Jusco Stores Bhd* [2003] 4 CLJ 848; [2003] 6 AMR 352, whereby the High Court Ipoh decided as follows:

Held

(a) Distress is clearly governed by statute and s 4 of the Act disallows distrain for arrears of rent by a landlord except in a manner as provided by the Act. There is no provision under the Act for the recovery of double rent means profit, or damages for holding over. The provisions of s. 5 of the Act are provisions for the recovery of arrears of rent, the phrases "rent due", and "arrears of rent", as well the wording in Form 118, fortifies this view. Although "rent", is not defined in the Act, the interpretation of the word "tenant" makes reference to it stating "... due under any lease, sub-lease or agreement" which refers to rent due under an agreement, and thus, not a charge arising through operation of law such as the double rental allowable pursuant to s. 28(4)(a) of the CLA.

(b) The phrase "chargeable" in s. 28(4)(a) of the CLA must be read as merely enabling and subject to the normal process of proof in a trial. The recovery of double rent is not as of right but a matter of discretion of court, and a landlord cannot therefore, proceed by way of summary process under the Act.

(iii) Based on the above case, the plaintiff's claim of double rental from the defendant should be dismissed.

(e) The whole transaction is only a friendly loan agreement and not an S&P agreement of the property.

(i) The defendant submitted that he and DW2 had signed a few documents given by the PW2 but they were not given the opportunity to read the documents before signing it. They also had no knowledge what documents they were signing. The documents that had been signed by the defendant proved that he had never intended to sell the property. It is submitted that it was merely a friendly loan transaction and thus S&P agreement to transfer the property to the plaintiff was invalid. It is further submitted that the defendant has discharged the burden of proof on balance of probabilities by calling in the evidence of the defendant's witnesses which corroborated each other to prove that this whole transaction was a loan agreement and not S&P transaction as alleged by the plaintiff.

(f) The defendant has proven its counterclaims.

(i) The defendant submits that the defendant has established its case on balance of probabilities that he has successfully proved that the whole transaction was a friendly loan agreement and not a S&P agreement to transfer the defendant's property to the plaintiff;

(ii) The defendant refers to the case of *Yogananthy AS Thambaiya v. Idris Osman* [1997] 5 CLJ 705; [1997] 1 AMR 670 whereby the High Court Johor Bahru decided as follows that:

> Whether the defendant was bound by the statutory declaration and whether oral evidence should be admitted to contradict the Statutory Declaration and loan agreement
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> The plaintiff's husband, B, had played a major role in reviving the company, and the defendant must have been under B's influence when he signed the statutory declaration and the loan agreement. Therefore, extrinsic evidence is required to prove the nature and the extent of the confidence and influence, for the purpose of setting aside the loan agreement and the statutory declaration.

(iii) The defendant also relied on the case of *Guan Teik Sdn Bhd v. Hj Mohd Noor Haji Yakob & Ors* [2000] 4 CLJ 324; [2000] 4 AMR 4062 at pp. 16-17.

[13] Based on the above cases, the defendant submits that the defendant has proven and led evidence to vitiate the plaintiff's documents of ownership of the property. Therefore, the defendant submits that the defendant has proven its case against the plaintiff on balance of probabilities and the plaintiff's claims be dismissed and the defendant's counterclaims be allowed with cost.

Issues

[14] There are two issues in the plaintiff's claims to be determined by the court:

(a) Whether the tenancy agreement between the plaintiff and the defendant is valid; and

(b) Whether the plaintiff is entitled for a vacant possession of the property.

[15] As to the defendant's counterclaims, the issue for the court is to determine whether the transfer of the property from the defendant to the plaintiff is void.

Findings

[16] Before dealing further with the issues at hand in the plaintiff's claims, the court is of the view that the issue as to whether the transfer of the property from the defendant to the plaintiff is valid must be first determined. The court took cognisance of s. 340 of the NLC that the title is indefeasible unless it falls within the exceptions. The court noticed that in the statement of defence, the defendant did plead fraud in the transfer of title of the property but failed to particularise the element of fraud.

[17] Order 18 r. 12 of the Rules of Court 2012 provides that:

> (1) Subject to paragraph (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing words:
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> (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies; and
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> (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies.

[18] In *Mallal's Supreme Court Practice*, where it is stated (at pp. 204 - 205 of the 4th edn) that:

> Particulars of fraud must be pleaded. A general allegation of fraud, however strong the words used, where there is no statement of circumstances relied on as constituting the alleged fraud, is insufficient even to amount to an averment of fraud of which any court ought to take notice: *John Wallingford v. The Directors & C of the Mutual Society and the Official Liquidator thereof* (1879-80) 5 App Cas 685 at pp 697, 701 and 709.

[19] The court found that there was no evidence against the plaintiff for an alleged fraud and/or unlawful transfer on a void and unenforceable instrument was tendered in court. The documents were signed with consent and with full knowledge of the defendant; friendly loan agreement (P6), sale and purchase agreement and its supplementary (P8 and P9), power of attorney (P10) and tenancy agreement (P5) to support the above proposition. In fact the Form 14A (P12) was endorsed on 6 May 2008 which is about four years from the date of this suit. The court is unable to accept the defendant's defence that he did sign those documents without being given an opportunity to read the documents before signing and claimed that he had no knowledge as to what document he was signing. In *Serangoon Garden Estate Ltd v. Marian Chye* [1958] 1 LNS 77; [1959] 1 MLJ 113, Chua J had occasioned to say at p. 114 as follows:

> I think it is quite clear that when a party signs contract knowing it to be contract which governs the relations between them, then, to use the words of Denning J. In the case of *Curtis v. Chemical Cleaning and Dyeing Co. supra*, "his signature is irrefragable evidence of his assent to the whole contract, including the exempting clauses, unless the signature is shown to be obtained by fraud or misrepresentation." In *L 'Estrange v. F. Graucob Ltd*" Scrutton L.J. said. "When a document containing contractual terms is signed, then, in the absence of fraud, or, I will add, misrepresentation, the party signing it is bound, and it is wholly immaterial whether he has read the document or not".

[20] Therefore, it is unlikely that the transfer was done fraudulently. It is trite law that when an agreement is signed by parties and in the absence of fraud or misrepresentation, parties are bound by its term. It is also the

principle of law that the court should construe the terms of the agreement within the four corners of the said agreement. (See *South East Asia Brickworks Sdn Bhd v. Maria Antonette* [1974] 1 LNS 158; [1979] 1 MLJ 46).

[21] There was no filing of civil suit against the plaintiff to recover or nullify or challenge the property. The issue of invalid transfer only arises in the defence's counterclaims after the plaintiff filed a suit for the failure of the defendant to pay the rent. Although there were four police reports made by the defendant but it were done after few years of the transfer of the property. Despite of the dispute in the transfer of the property, there is no evidence to show that the defendant had taken steps to safeguard his interest in the property such as by filing a caveat. It is trite law that caveats are to be used for the protection of alleged as well as proved interests and that a caveat is merely a warning which creates no new rights but protects existing rights, if any. See Tritscher J in *CPR v. District Registrar of Dauphin Land Titles Office* (1956) 4 DLR (2nd) 518 and *Samuel Naik Siang Ting v. Public Bank Bhd* [2015] 8 CLJ 944.

[22] It was not disputed that there is a tenancy agreement dated 1 March 2010 executed and signed by the plaintiff and the defendant in that the plaintiff has agreed to rent out the property and the defendant has agreed to pay rental of RM800 per month from 8 March 2010 to 28 February 2012. As to date the defendant had paid a sum of RM11,500 as rental to the plaintiff. By signing the tenancy agreement, there is an acknowledgment by the defendant that the plaintiff is the legal owner of the property. The conduct of the defendant has shown that he had accepted the property belongs to the plaintiff and he had submitted his willingness to pay the rent as a tenant to that property without any dispute or objections shows that the defendant admitted to the validity of the tenancy agreement. Therefore, the court finds that the tenancy agreement is valid and binds both parties.

[23] The court was unable to accept the reasons given by the defendant in signing the tenancy agreement was due to the insistence or coercion by the plaintiff and also out of fear that his family would be harmed. There were no evidence to support such reasons and the court find that it is only an allegation. In fact the defendant chooses not to continue paying the rental. On top of that the defendant had agreed to terminate the tenancy agreement and promised to deliver vacant possession.

[24] For the reasons above, the court finds that there is no fraudulent or illegal transfer of the property from the defendant to the plaintiff. The court is satisfied that the defendant was fully aware of the transaction and signed all the relevant documents and forms voluntarily in full awareness of his rights and obligations and consequences thereof. There was also valuable consideration of all of those transactions. The transfer of the property to the plaintiff on 6 May 2008 through P12 and approval letter P11 by the Pentadbir Tanah was a result of the sale and purchase agreement on

30 November 2005 (P8) between the plaintiff and the defendant. Thus, the plaintiff being in the position of a registered proprietor of the property would have attained an indefeasible title against the word under s. 340 NLC in the absence of fraud or transferred on a void and unenforceable instrument.

[25] As to the defendant's contention that the whole transaction was void and it was an illegal act of money lending, the court finds that the proposition is untenable since the defendant himself admitted that the money transaction was based on a friendly loan.

[26] The court is satisfied that P2 clearly showed that the plaintiff had demanded the outstanding rental. At the same time, the defendant had acknowledged the P2 by signing and agreed with the termination of the tenancy agreement but continues to stay on the property without paying any rental and refused to deliver vacant possession on the ground that he was advised the transfer was invalid. The court is unable to accept the defendant's contention for reason as the court had mentioned earlier in determining the validity of the transfer of the property from the defendant to the plaintiff. Thus, the plaintiff's claim for double rental of RM1,600 per month is allowed from 1 June 2011 until the delivery of vacant possession. See *Imbi World Sdn Bhd v. Deluxe Tours Sdn Bhd & Another Appeal* [1997] 3 CLJ 504.

> Support the proposition once there is holding over of the tenancy property, landlord is entitled to double rental calculated from the date of expiry of which to quit to the date when possession is handed over.

[27] The failure of the defendant to deliver vacant possession falls within the operation of s. 28(4)(a) of the Civil Law Act 1956 entitling the plaintiff to claim double rental for holding over. See *Jelai Holdings Sdn Bhd v. Perbadanan Setiausaha Kerajaan Pahang* [2014] 1 LNS 854. Thus, the plaintiff's claim for double rental is allowed.

[28] As to the counterclaims the court finds that defendant has failed to adduce evidence to support his claims against the plaintiff. In the absence of such evidence and based on the findings above, the transfer of the property is valid and the plaintiff has obtained an indefeasibility title in the property.

[29] Having heard the evidences and submissions from both learned counsels and after having given much consideration, I, on the balance of probabilities, allowed the plaintiff's claims as prayed in the statement of claim and dismissed the defendant's counterclaims. Costs of RM10,000 to the plaintiff.